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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,536	06/29/2001	James S. Magdych	NAI1P008/01.113.01	6511
28875	7590	04/07/2005	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			AILES, BENJAMIN A	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/895,536	<b>Applicant(s)</b> MAGDYCH ET AL.	
	<b>Examiner</b> Benjamin A Ailes	<b>Art Unit</b> 2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-25, and 27-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-25, 27-30, and 32-34 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in regards to the Amendment and Request for Reconsideration received on 01 December 2004. This action is NON-FINAL. Claims 1, 14, and 28-30 have been amended. Claims 13 and 26 have been canceled. Claims 31-34 have been added. Claims 1-12, 14-25, and 27-34 are now pending in this application.

#### ***Response to Amendment***

2. Examiner acknowledges the amendments to claims 14-28 and 30, which now appears to be in conformance. The 35 U.S.C 101 rejection has been withdrawn.

#### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-9, 12, 14-22, 25, 27-30, and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kingsford et al. (U.S. 6,574,737), hereinafter referred to as Kingsford, in view of Chang et al. (U.S. 6,526,433), hereinafter referred to as Chang.

5. Regarding claims 1, 14, and 28, Kingsford teaches the use of risk assessment scan modules extensively (for example, see Kingsford, col. 15, line 31 – col. 17, line 64), as well as the method of stopping a risk assessment scan based upon the occurrence of a predetermined event, in this case, a time-out (see Kingsford, col. 17, lines 29-37). While Kingsford does disclose the execution of a risk-assessment scan on the target from the source (col. 2, lines 35-43) and the act of performing a risk-assessment scan related time-out prior to making a determination that the target is

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failing to respond to the risk-assessment (col. 17, lines 29-37), Kingsford is silent on how to specifically implement the predetermined event, in this case a time-out (col. 17, lines 29-37). However, Chang discloses the use of an adaptive time out value setting applicable to computer applications, including the measuring of network conditions in a network coupled between a source and a target (col. 2, lines 29-33) and the setting of the variable duration value which is set by a function of the measured network conditions (col. 2, lines 29-33). One of ordinary skill in the art at the time of the applicant's invention would have found it obvious to use the risk-assessment scan module method utilizing a time-out function as disclosed by Kingsford and in order to implement and raise the efficiency of the time-out feature, an ordinary artisan in the art would be motivated to use the adaptive timeout value setting for computer applications method as disclosed by Chang. Because of the combination, a variable duration time-out value is provided (see Chang, col. 2, lines 29-33) and the abandonment of a risk-assessment scan is implemented (see Kingsford, col. 17, lines 29-37).

Communications between a client and a server are well known in the art, as well as the implementation of time-out use. Chang discloses a time-out function that reflects on environmental factors and communications conditions that can be applied to a wide range of client-server applications in which time-outs are expected to happen (see Chang, col. 7, lines 23-30). Kingsford, as stated above, discloses the use of a risk-assessment scan between a target and a source, a client/server application, in which Kingsford discloses is an environment where time-outs, or predetermined events, are expected to occur (see Kingsford, col. 17, lines 29-35). It is for these reasons that one

of ordinary skill in the art would be motivated to combine the risk-assessment scan module having the ability to stop based on a time-out as disclosed by Kingsford with the adaptive time-out setting for computer applications method based on environmental factors and communications conditions as disclosed by Chang.

6. Regarding claims 2 and 15, in accordance with claims 1 and 14 as explained above, Chang discloses the network conditions including latency associated with communication between the source and the target (col. 2, lines 34-38 and col. 6, lines 26-34). The same motivation that was utilized in the combination of claims 1 and 14 above applies equally as well to claims 2 and 15.

7. Regarding claims 3 and 16, in accordance with claims 1 and 14 as explained above, Chang discloses the measuring of the network conditions including the transmitting of a probe signal from the source to the target utilizing the network (col. 6, lines 26-34). The same motivation that was utilized in the combination of claims 1 and 14 above applies equally as well to claims 3 and 16.

8. Regarding claims 4 and 17, in accordance with claims 3 and 16 as explained above, Chang discloses the probe signal prompting the target to send a response signal to the source utilizing the network (col. 6, lines 26-34). The same motivation that was utilized in the combination of claims 1 and 14 above applies equally as well to claims 4 and 17.

9. Regarding claims 5 and 18, in accordance with claims 4 and 17 as explained above, Chang discloses the measurement of network conditions further including the reception of a response signal from a target utilizing the network (col. 6, lines 26-34).

The same motivation that was utilized in the combination of claims 1 and 14 above applies equally as well to claims 5 and 18.

10. Regarding claims 6 and 19, in accordance with claims 5 and 18 as explained above, Chang discloses the measurement of network conditions further including the measurement of a response duration between the transmission of the probe signal and the receipt of the response signal (col. 6, lines 26-34). The same motivation that was utilized in the combination of claims 1 and 14 above applies equally as well to claims 6 and 19.

11. Regarding claims 7 and 20, in accordance with claims 6 and 19 as explained above, Chang discloses the method wherein the time-out is set as a function of the response duration (col. 6, lines 35-51). The same motivation that was utilized in the combination of claims 1 and 14 above applies equally as well to claims 7 and 20.

12. Regarding claims 8 and 21, in accordance with claims 1 and 14 as explained above, Chang discloses the method wherein the time-out is set by adding a default value with a variable value which is set as a function of the measured network conditions (col. 1, lines 27-30, col. 6, lines 22-25, and col. 6, line 49 – col. 7, line 5). The same motivation that was utilized in the combination of claims 1 and 14 above applies equally as well to claims 8 and 21.

13. Regarding claims 9 and 22, in accordance with claims 1 and 14 as explained above, Chang discloses the method wherein the time-out is set by multiplying a default value with a variable factor which is set as a function of the measured network conditions (col. 1, lines 27-30, col. 6, lines 22-25, and col. 6, line 49 – col. 7, line 5).

The same motivation that was utilized in the combination of claims 1 and 14 above applies equally as well to claims 9 and 22.

14. Regarding claims 12 and 25, in accordance with claims 1 and 14 as explained above, Chang discloses the method further comprising storing a result of the measurement of the network conditions (col. 6, lines 30-34). The same motivation that was utilized in the combination of claims 1 and 14 above applies equally as well to claims 12 and 25

15. Regarding claim 27, in accordance with claim 14 as explained above, Chang discloses the product wherein the network conditions are measured for a network segment, and the measured network conditions are used to set the timeout for a plurality of targets located on the network segment (col. 2, lines 29-33 and lines 43-47). The same motivation that was utilized in the combination of claim 14 above applies equally as well to claim 27.

16. Claims 29 and 30 contain identical limitations as disclosed in claims 1, 3, 5, 6 and 10, and are rejected under the same rationale.

17. Regarding claim 32, in accordance with claim 1 as explained above, Chang discloses the method wherein the timeout is set utilizing a plurality of network condition probes that gather multiple network condition measurements on a single target (col. 2, lines 29-33).

18. Regarding claim 33, in accordance with claim 1 as explained above, Chang discloses the method wherein the measured network conditions are measured for an

entire network segment on which a plurality of target components is located (col. 2, lines 29-33 and lines 43-47).

19. Regarding claim 34, in accordance with claim 1 as explained above, Chang discloses the method wherein the source is capable of reducing a latency of the risk-assessment scan by setting the variable duration to a minimum value, while avoiding the abandonment of vulnerable systems reachable over high latency networks by increasing the variable duration to accommodate such scenarios (see Fig. 4 and col. 5, lines 49-56).

20. Claims 10-11 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kingsford.

21. Regarding claims 10 and 23, in accordance with claims 1 and 14, respectively, Kingsford discloses the method wherein executing the risk-assessment scan includes executing a plurality of risk-assessment scan modules (see Abstract).

22. Regarding claims 11 and 24, in accordance with claims 10 and 23 as explained above, Kingsford discloses the timeout being performed for each of the risk-assessment modules (col. 17, lines 29-37).

***Allowable Subject Matter***

23. Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



***Response to Arguments***

24. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Because new grounds of rejection are being applied against substantively unamended claims, this action is NON-FINAL.

***Conclusion***

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin A. Ailes, whose telephone number is (571)272-3899. The examiner can normally be reached on Monday-Friday (7:30-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached at (571)272-3896. The fax phone number for the organization where this application or proceeding is assigned is (703)872-3906.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [benjamin.ailes@uspto.gov].

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All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Benjamin Ailes  
Patent Examiner  
Art Unit 2142

*Benjamin Ailes*  
Primary Examiner